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January 27, 1993

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Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: MM Docket 92-266

Dear Ms. Searcy:

On behalf of The Lenfest Group, we are submitting herewith the original and four (4) copies of its Comments in the above-referenced rulemaking proceeding.

Should there be any questions concerning the Comments, please communicate with the undersigned.

Sincerely yours,

John R Wilner

John R. Wilner

JRW/cjy
Enclosure

BEFORE THE

Federal Communications Commission

WASHINGTON, D. C. 20554

In the Matter of	)	
	)	
Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992	)	MM Docket No. 92-266
	)	
Rate Regulation	)	

To: The Commission

COMMENTS OF THE LENFEST GROUP

The Lenfest Group submits these Comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM") in the captioned proceeding, released December 24, 1992. The cable system companies that comprise The Lenfest Group ("Lenfest"), Suburban Cable TV Co. Inc., Cable Oakland and LenComm, Inc., serve approximately 490,000 basic cable television subscribers in the States of Pennsylvania, New Jersey, and California. Based on its experience providing cable television service over many years to diverse communities and subscriber constituencies, Lenfest is proffering the following comments on certain of the rule proposals discussed in the NPRM.

I. Standards and Procedures for Identifying Cable Systems Subject to Rate Regulation for Provision of Cable Services

The Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act") establishes three separate tests for determining whether a cable system is subject to "effective competitive", thereby precluding the franchising

authority from regulating the system's rates for basic cable service. The second of the three tests involves competing multichannel video programming distributors. The Commission has requested comment on what services qualify as "a multichannel video programming distributor."

Lenfest submits that in addition to the entities listed in Section 602(12) of the Communications Act, as amended, i.e., a cable operator, an MMDS provider, a direct broadcast satellite service, and a television receive only satellite program distributor, the Commission must consider a telephone company offering of "video dialtone" as a "multichannel video programming distributor" under the second of the effective competition tests. The Commission made it plain in 1992 that it envisions video dialtone as a direct competitor to cable television. Hence, there is every reason to consider this new system for video distribution to the home in assessing whether a cable system is subject to effective competition.

The Cable Act's purposes also would be served by adding together the subscribership of all alternative multichannel video programming distributors to determine whether at least 15 percent of the households in the franchise area receive a competitive programming service. The key here is the threshold level of effective competition to the local cable system, not how many different alternative video programming delivery services provide that competition. A cable system competing against one or more alternative video delivery systems with a composite 15 percent

penetration rate should be deemed subject to effective competition as contemplated by Congress.

II. Basic Cable Service Regulation.

A. Components of the Basic Service Tier Subject to Regulation.

The Commission has tentatively concluded that cable operators should be unrestricted as to the number and type of video programming signals or services they may offer on the basic service tier, subject to basic rate regulation. Lenfest agrees with the Commission's position. There appears to be no valid reason why a cable operator should not be afforded maximum discretion within the confines of applicable law to package its basic service tier in light of the host of marketing, economic and programming factors that control such a decision, with the knowledge that its basic service will be subject to local rate regulation.

In this same vein, Lenfest concurs with the Commission that the plain language of Section 623(b)(7)(A) of the Communications Act, as amended, limits the "basic buy through" requirement to other tiers of service, not programming offered on an "a la carte", stand-alone basis unconditioned on the prior purchase of basic service. In Lenfest's experience, subscribers increasingly desire the ability to select and choose from among the many programming options offered by their cable system. It can be expected that technological advances will afford cable operators even greater flexibility to meet the "a la carte"

desires of their subscribers. A restrictive interpretation of the legislation would unduly inhibit the cable industry's flexibility to meet the special programming interests of current and potential subscribers.

B. Regulation of the Basic Service Tier by Local Franchising Authorities and the Commission.

The Commission has concluded that its authority to regulate basic cable service rates under amended Section 623 of the Communications Act is limited to those instances when it has disallowed or revoked the franchising authority's certification under the new certification procedure. Lenfest submits that the Commission's position is well-founded. If a franchising authority elects to "opt out" of local rate regulation, its decision should not be questioned or overturned at the federal level. Lenfest has encountered franchising authorities that are perfectly content with their local cable system's service and rates and are under no pressure from local subscribers to engage in local rate regulation. These purely local decisions by authorities directly responsible to their constituents for the local cable system operation should not be subject to second-guessing by the Commission.

With respect to implementation of the certification procedures established by Section 623(a)(3)(6) of the Communications Act, as amended, Lenfest offers the following comments.

- While the exercise of joint regulatory jurisdiction by two or more communities served by the same cable operator ought not be precluded, the Commission should not actively encourage or require such rate regulation. Each political subdivision has its own individual characteristics (e.g. size, population density, duration of cable service) and so does the cable operation serving the community (e.g. plant age, bandwidth, and, possibly, signals carried). Thus, mandatory coordination of rate regulation efforts could impose unnecessary and burdensome regulatory requirements on some franchising authorities.

- Cable operators should be allowed to participate during the 30-day certification review period required by the Cable Act. To ensure that a cable operator is afforded a full opportunity to comment upon a certification submission, Lenfest recommends that the franchising authority be required to give its local cable operator at least ten (10) days written notice before the certification is filed with the Commission and formally served on the cable operator. With such advance notice, the cable operator would be better armed to participate, if necessary, during the initial certification process before the Commission. Furthermore, the advance notice requirement proposed by Lenfest would facilitate an expedited pleading cycle prior to Commission action on the certification filing.

- The Commission should also adopt an expedited pleading cycle in cases involving proposed revocation of a franchising authority's jurisdiction to regulate basic service rates. In

such instances, the cable system petitioner would be required to serve a copy of its petition on the franchising authority, which would be afforded not more than 14 days in which to file a responsive pleading. The Commission must itself then be prepared to act promptly on the petition in light of the critical importance of the jurisdictional issue.

III. Regulation of Rates for Equipment

The Commission proposes to require cable operators to base charges for equipment covered by Section 623(b)(3) of the Communications Act, as amended, on direct costs, and indirect cost allocations, including reasonable general administrative loadings and a reasonable profit. This presents a troublesome area of regulation for the Commission. In Lenfest's experience, costs of in-home equipment are constantly rising while rapid technological advances potentially shorten the useful life of any particular piece of equipment.

Lenfest uses an average life of five (5) for in-home equipment. If the equipment is not obsolete at the end of its nominal life span, it generally will require servicing to maintain its usefulness. Thus, at the point when the equipment is fully depreciated, the cost of maintenance becomes a significant factor. It should also be noted that Lenfest does not charge for service calls to repair equipment during its accounting lifetime. Therefore, if Lenfest is not allowed to allocate joint and common costs to equipment, it will be compelled to charge for service calls to subscriber residences.

In Lenfest's view, it would be impractical to calaculate direct equipment costs on the basis of per-customer prices. Rather, the only efficient method for determining direct costs is to aggregate the cost of equipment acquired in a particular period of time and allocate those costs among the individual customers. This approach would best meet the Commission's stated goals for regulating equipment costs.

Lenfest does not oppose allowing its customers to switch from equipment purchased from Lenfest to equipment obtained from an alternative source. These situations present more of a regulatory compliance problem than a financial concern for the cable operator as it must somehow ensure that independently-supplied equipment does not jeopardize its ability to comply with the Commission's technical standards.

The Commission's proposal to allow cable operators to recover installation costs as one-time charges is pragmatic and enlightened, as is its recognition that costs for installation will vary depending upon the circumstances in a particular home. Lenfest favors use of a single average rate for a normal in-home installations, but the cable operator should be afforded discretion to impose a surcharge for unusual installation requirements, e.g. excessive distance between cable distribution plant and customer premises; abnormal terrain features; underground v. aerial installation; and customized installations. In such instances, the installation charge should be adequate to allow the cable operator to recover its actual costs.

With regard to charges for additional connections, Lenfest submits that the Commission must recognize that there are separate ongoing costs associated with maintaining quality service to additional television receivers in a home. Service to additional outlets requires higher signal levels at a cost that varies from home to home. Further, the cable operator's repair and maintenance service must cover more outlets and at a higher cost. In sum, Lenfest urges the Commission to adhere to its general service unbundling policy and require customers with additional outlets to bear the costs of providing and maintaining such service to their homes.

IV. Implementation and Enforcement

Lenfest advocates adoption of a sixty (60) day notice period for changes in basic service rates. After that time, barring extraordinary circumstances, a rate increase should automatically become effective. In the event of a complex case such as envisioned by the Commission in paragraph 82 of the NPRM, the time period may be extended, but only for an additional thirty (30) days. This time schedule should accommodate the twin goals of effective local review of rate increases and avoidance of undue delays detrimental to the cable operator and the public.

When there is a proposed rate increase, it is the Commission, not some other authority, that should intercede to resolve the dispute. The entire rate setting process will be under the Commission's auspices, encompassing initial certification of the franchising authority to the federal

guidelines for establishing basic service rates. Furthermore, the Commission will be a storehouse of expertise on rate regulation issues and therefore will be better able to render a fair and impartial decision than some less-informed body.

V. Regulation of Cable Programming Services
Negative Option Billing

The Commission has tentatively concluded that a subscriber can be billed for any cable service requested by the subscriber orally or in writing. Lenfest urges that the Commission make clear that affirmative subscriber requests made electronically, e.g. Audio Response Units (ARU) and Automatic Number Identification (ANI), used for ordering pay-per-view and premium channels, are considered affirmative requests under the Cable Act.

Respectfully submitted,

THE LENFEST GROUP

January 27, 1993

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